

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred House Bill
3 No. 112 entitled “An act relating to access to financial records in adult
4 protective services investigations” respectfully reports that it has considered
5 the same and recommends that the Senate propose to the House that the bill be
6 amended by striking out all after the enacting clause and inserting in lieu
7 thereof the following:

8 Sec. 1. 33 V.S.A. § 6911 is amended to read:

9 § 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

10 (a)(1) Information obtained through reports and investigations, including
11 the identity of the reporter, shall remain confidential and shall not be released
12 absent a court order, except as follows:

13 ~~(1)(A)~~ The investigative report shall be disclosed only to: the
14 Commissioner or person designated to receive such records; persons assigned
15 by the Commissioner to investigate reports; the person reported to have
16 abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his
17 or her representative; the Office of Professional Regulation when deemed
18 appropriate by the Commissioner; the Secretary of Education when deemed
19 appropriate by the Commissioner; the Commissioner for Children and Families
20 or designee; for purposes of review of expungement petitions filed pursuant to
21 section 4916c of this title; the Commissioner of Financial Regulation when

1 deemed appropriate by the Commissioner for an investigation related to
2 financial exploitation; a law enforcement agency; the State’s Attorney, or the
3 Office of the Attorney General, when the Department believes there may be
4 grounds for criminal prosecution or civil enforcement action, or in the course
5 of a criminal or a civil investigation. When disclosing information pursuant to
6 this subdivision, reasonable efforts shall be made to limit the information to the
7 minimum necessary to accomplish the intended purpose of the disclosure, and
8 no other information, including the identity of the reporter, shall be released
9 absent a court order.

10 ~~(2)~~(B) Relevant information may be disclosed to the Secretary of
11 Human Services, or the Secretary’s designee, for the purpose of remediating or
12 preventing abuse, neglect, or exploitation; to assist the Agency in its
13 monitoring and oversight responsibilities; and in the course of a relief from
14 abuse proceeding, guardianship proceeding, or any other court proceeding
15 when the Commissioner deems it necessary to protect the victim, and the
16 victim or his or her representative consents to the disclosure. When disclosing
17 information pursuant to this subdivision, reasonable efforts shall be made to
18 limit the information to the minimum necessary to accomplish the intended
19 purpose of the disclosure, and no other information, including the identity of
20 the reporter, shall be released absent a court order.

1 (3) “Financial information” means an original or copy of, or information
2 derived from:

3 (A) a document that grants signature authority over an account held
4 at a financial institution;

5 (B) a statement, ledger card, or other record of an account held at a
6 financial institution that shows transactions in or with respect to that account;

7 (C) a check, clear draft, or money order that is drawn on a financial
8 institution or issued and payable by or through a financial institution;

9 (D) any item, other than an institutional or periodic charge, that is
10 made under an agreement between a financial institution and another person’s
11 account held at a financial institution;

12 (E) any information that relates to a loan account or an application
13 for a loan;

14 (F) information pertaining to an insurance or endowment policy,
15 annuity contract, contributory or noncontributory pension fund, mutual fund,
16 or security, as defined in 9 V.S.A. § 5102; or

17 (G) evidence of a transaction conducted by electronic or telephonic
18 means.

19 (4) “Financial institution” means any financial services provider
20 licensed, registered, or otherwise authorized to do business in Vermont.

1 including a bank, credit union, broker-dealer, investment advisor, mutual fund,
2 or investment company.

3 (b) A person having custody or control of the financial information of a
4 vulnerable adult shall make the information or a copy of the information
5 available to an adult protective services investigator upon receipt of a court
6 order or receipt of the investigator's written request.

7 (1) The request shall include a statement signed by the account holder, if
8 he or she has capacity, or the account holder's guardian with financial powers
9 or agent under a power of attorney consenting to the release of the information
10 to the investigator.

11 (2) If the vulnerable adult lacks capacity and does not have a guardian or
12 agent, or if the vulnerable adult lacks capacity and his or her guardian or agent
13 is the alleged perpetrator, the request shall include a statement signed by the
14 investigator asserting that all of the following conditions exist:

15 (A) The account holder is an alleged victim of abuse, neglect, or
16 financial exploitation.

17 (B) The alleged victim lacks the capacity to consent to the release of
18 the financial information.

19 (C) Law enforcement is not involved in the investigation or has not
20 requested a subpoena for the information.

1 (D) The alleged victim will suffer imminent harm if the investigation
2 is delayed while the investigator obtains a court order authorizing the release
3 of the information.

4 (E) Immediate enforcement activity that depends on the information
5 would be materially and adversely affected by waiting until the alleged victim
6 regains capacity.

7 (F) The Commissioner of Disabilities, Aging, and Independent
8 Living has personally reviewed the request and confirmed that the conditions
9 set forth in subdivisions (A) through (E) of this subdivision (2) have been met
10 and that disclosure of the information is necessary to protect the alleged victim
11 from abuse, neglect, or financial exploitation.

12 (c) If a guardian refuses to consent to the release of the alleged victim's
13 financial information, the investigator may seek review of the guardian's
14 refusal by filing a motion with the Probate Division of the Superior Court
15 pursuant to 14 V.S.A. § 3062(c).

16 (d) If an agent under a power of attorney refuses to consent to the release of
17 the alleged victim's financial information, the investigator may file a petition
18 in Superior Court pursuant to 14 V.S.A. § 3510(b) to compel the agent to
19 consent to the release of the alleged victim's financial information.

20 (e) The investigator shall include a copy of the written request in the
21 alleged victim's case file.

1 (f) The person having custody or control of the financial information shall
2 not require the investigator to provide details of the investigation to support the
3 request for production of the information.

4 (g) The information requested and released shall be used only to investigate
5 the allegation of abuse, neglect, or financial exploitation or for the purposes set
6 forth in subdivision 6911(a) (1)(B) of this title and shall not be used against the
7 alleged victim.

8 (h) The person having custody or control of the financial information shall
9 provide the information to the investigator as soon as possible but, absent
10 extraordinary circumstances, no later than 10 business days following receipt
11 of the investigator's written request or receipt of a court order or subpoena
12 requiring disclosure of the information.

13 (i) A person who in good faith makes an alleged victim's financial
14 information or a copy of the information available to an investigator in
15 accordance with this section shall be immune from civil or criminal liability
16 for disclosure of the information unless the person's actions constitute gross
17 negligence, recklessness, or intentional misconduct. Nothing in this section
18 shall be construed to provide civil or criminal immunity to a person suspected
19 of having abused, neglected, or exploited a vulnerable adult.

20 (j) The person having custody or control of the financial information of an
21 alleged victim may charge the Department of Disabilities, Aging, and

1 Independent Living no more than the actual cost of providing the information
2 to the investigator and shall not refuse to provide the information until
3 payment is received. A financial institution shall not charge the Department
4 for the information if the financial institution would not charge if the request
5 for the information had been made directly by the account holder.

6 Sec. 3. 8 V.S.A. § 10204 is amended to read:

7 § 10204. EXCEPTIONS

8 This subchapter does not prohibit any of the activities listed in this section.

9 This section shall not be construed to require any financial institution to make

10 any disclosure not otherwise required by law. This section shall not be

11 construed to require or encourage any financial institution to alter any

12 procedures or practices not inconsistent with this subchapter. This section

13 shall not be construed to expand or create any authority in any person or entity

14 other than a financial institution.

15 * * *

16 (25) Reports or disclosure of financial or other information to the

17 Department of Disabilities, Aging, and Independent Living, pursuant to

18 33 V.S.A. §§ 6903(b) ~~and~~, 6904, and 6915.

19 Sec. 4. EFFECTIVE DATE

20 This act shall take effect on passage.

1 and that after passage the title of the bill be amended to read: “An act relating
2 to access to financial information in adult protective services investigations”

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4

5 (Committee vote: _____)

6

7

Senator _____

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FOR THE COMMITTEE